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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,218	01/16/2001	Jaime Vargas	032405-042	7487

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CARDICA, INC.
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EXAMINER

NGUYEN, VI X

ART UNIT PAPER NUMBER

3731

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/764,218

Applicant(s)

VARGAS ET AL.

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 2-9, 17 and 19-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10-16 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION**Response to Election/Restriction**

1. Applicant's election without traverse of Invention I, in Paper No. 10 is acknowledged. However, Applicant's election with traverse of Species VII of Invention I, claims 1, 10-16 and 18 in Paper No. 10 is also acknowledged. The traversal is on the ground(s) that "Applicant, can not locate any reasons in the present application for requiring election of species. Nor has the Examiner provided any evidence to support that no claims in inventions I and II are generic. Therefore, Applicants submit that the restriction of Species VII of Invention I is not well taken and request that it be withdrawn" (Applicants' response page 1-22, fourth paragraph). This is not found persuasive for requesting the withdrawn of the restriction of Species VII of Invention I for the following reasons: 1) The examiner is acknowledged that claims 1 and 26 are generic. 2) the restriction of Species VII of Invention I is still deem proper due to different species are drawn to different features in the claims. As applicants point out on the applicants' response from page 3 to page 22, it is clearly indicated that the restriction of Species VII of Invention I is proper according to MPEP 806.04 (f) **Claims Restricted to Species, by Mutually Exclusive Characteristic.**

The requirement is still deemed proper and is therefore made Final. Claims 1, 10-16 and 18 are drawn to Species VII of Invention I. Claims 2-9, 17 and 19-53 are withdrawn from further consideration pursuant to 37 CFR 1.142 (b), as being drawn to a nonelected inventions.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 10-11, 13-16 and 18 are rejected under 35 U.S.C. 102 (e) as being anticipated by Hart et al. (U.S. 6,099,553).

As to claim 1, Hart et al show in figures 1, 3, 5, 9, 11 and col. 2, lines 8-57, a method for grafting a graft vessel to a target vessel including an incision (30) in the target vessel (32); wherein placing incision tensioners (10) within the incision in the target vessel (32) and tensioning the incision in the target vessel (32) with the incision tensioners (10); and wherein grafting the graft vessel to the target vessel (32) while the incision (30) is tensioned.

As to claims 10 and 11, Hart et al show in figures 16-19 and col. 6 lines 49-67, col. 7 lines 1-6, wherein the incision (30) is tensioned to a predetermined length which corresponds to a size of the graft vessel to be grafted to the target vessel (32); and wherein pulling the incision tensioners (10) with a predetermined force.

As to claims 13 and 14, Hart et al show in figures 1, 3, 5, 9, 11, wherein the incision tensioners (10) are clips (col. 8 lines 53-60) which include a first tine (54) and a second tine (63); and wherein both the first tine (54) and the second tine (63) are configured to penetrate both the graft vessel and the target vessel (32).

As to claims 15-16 and 18, Hart et al show in figures 1, 3, 5, 9, 11, wherein both the first tine (54) and the second tine (63) are configured to rotate such that the first tine (54) and the second tine (63) capture the graft vessel and the target vessel (32); wherein both the first tine (54) and the second tine (63) are configured to fold over (col. 6, lines 4-67) such that the first

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tine (54) and the second tine (63) capture the graft vessel and the target vessel (32); and wherein the tensioning of the incision (30) allows a geometry of the incision in the target vessel (32) to remain constant during the anastomosis procedure.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Hart et al. (U.S. 6,099,553). Although, Hart et al do not disclose the predetermined force is in a range of about 0.001 N to about 4.5 N. It would have been obvious matter of design choice to modify the predetermined force is in a range of about 0.001 N to about 4.5 N, since such a modification would have involved a mere change in the size or shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,176,413 to Heck

U.S. Pat. No. 5,881,943 to Heck

U.S. Pat. No. 6,176,413 to Heck

U.S. Pat. No. 6,248,117 to Blatter

U.S. Pat. No. 4,938,740 to Melbin

U.S. Pat. No. 5,207,695 to Trout

U.S. Pat. No. 4,366,819 to Kaster

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898.


The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen
Examiner
Art Unit 3731

vn
January 20, 2003


KEVIN T. TRUONG
PRIMARY EXAMINER

1/24/03